

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32¹

DAIRY FARMERS OF AMERICA, INC.
Employer

and

Case 32-RC-5277

TEAMSTERS UNION LOCAL 386,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO
Petitioner

REPORT AND RECOMMENDATIONS ON OBJECTIONS

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the Petitioner's objections to be conducted and recommends that the objections be overruled in their entirety because the Petitioner has failed to meet its minimum burden of providing evidence and/or names of witnesses who could testify in support of its objections.

The Election

The Petition in this matter was filed on August 18, 2004.² Pursuant to a Stipulated Election Agreement approved on September 7, an election by secret ballot was conducted on September 29 in the following unit:

All full time and regular part-time production and maintenance employees,
including lead persons, working forepersons, and laboratory technicians,

¹ Herein called the Board.

² All dates hereinafter refer to calendar year 2004.

employed by the Employer at its Turlock, California facility; **excluding** office clerical employees, temporary employees, managers, guards, and supervisors as defined by the Act.

The tally of ballots served on the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters.....	78
Number of void ballots.....	0
Number of votes cast for participating labor organization.....	28
Number of votes against participating labor organization.....	43
Number of valid votes counted.....	71
Number of challenged ballots.....	3
Valid votes counted plus challenged ballots.....	74

Challenged ballots were insufficient in number to affect the results of the election.

Thereafter, the Petitioner filed timely objections to the election, a copy of which was served on the Employer by the Region.

The Objections³

As the objecting party, the Petitioner has the sole burden of providing evidence in support of its objections. *City Wide Insulation of Madison, Inc.*, 338 NLRB No. 108, slip op at p. 3 (Feb. 27, 2003). To satisfy this burden, the Petitioner may specifically identify witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objections. *Id.*, *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983). In the alternative, the Petitioner may provide specific affidavit testimony and other specific evidence in support of its objections. *City Wide Insulation of Madison, supra*. This evidence or description of evidence must be provided to the Regional Office “within 7 days of the day the objections are required to be filed or within such additional time as

may have, upon a timely request, been allowed by the Regional Director.” Id. (quoting from NLRB Casehandling Manual (Part Two) Section 11392.6). The Petitioner submitted a statement on October 13, outlining certain legal authorities to support certain of its objections. Although the statement sets forth some details of the basis for Objections Nos. 1, 5, and 7, it does not provide the name of any witnesses who could provide direct testimony in support of those or any of the other Petitioner objections. It is further noted that the Petitioner’s aforementioned position statement does not provide any details at all regarding Objections Nos. 2, 3, 4, and 6. Accordingly, I recommend that Petitioner’s objections be overruled in their entirety. As Petitioner did not receive a majority of valid votes cast in the election, I also recommend that an appropriate Certification of Results be issued.⁴

DATED AT Oakland, California this 25th day of October, 2004.

/s/ Alan B. Reichard

Alan B. Reichard
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Room 300N

³ Attached as Exhibit 1

⁴ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the National Labor Relations Board, 1099 14th Street, NW, Washington, DC, 20570-0001. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Report or appended to the exceptions or opposition thereto which a party submits to the Board. Exceptions must be received by the Board in Washington, DC by **November 8, 2004**.

Oakland, CA 94612-5211

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9 NATIONAL LABOR RELATIONS BOARD
10 REGION 32
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12 DAIRY FARMERS OF AMERICA,

Case No. 32-RC-5277

13 Employer,

**OBJECTIONS TO CONDUCT OF
ELECTION**

14 and

15 TEAMSTERS LOCAL 386,

16 *Union.*
17

18 COMES NOW, Teamsters *Local 386, AFL-CIO*, the Union, and pursuant to Section 102.69

19 of the Rules of the Board, as amended objects to conduct of the election and/or to conduct

20 affecting the outcome of the election in this matter held herein on September 29, 2004.

21 I. The Board Agent did not properly seal the ballot box, thus rendering the election
22 invalid.

23 2. The employer threatened employees.

24 3. The employer made promises of benefits.

25 4. The employer provided additional benefits and wage increases to employees.

26 5. The employer engaged in captive audience meetings within 24 hours of the election.

27 6. The employer changed conditions and offered benefits of training.

28 7. The employer allowed third party contractors into the building on the date of
29

election who campaigned against the election.

2 Dated: October 5, 2004

WEINBERG, ROGER & ROSENFELD

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A Professional Corporation

By: David A. Rosenfeld

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Attorneys for Union

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